

1-1 By: Harris, Zaffirini S.B. No. 233  
1-2 (In the Senate - Filed January 12, 2007; January 30, 2007,  
1-3 read first time and referred to Committee on Transportation and  
1-4 Homeland Security; April 3, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 8,  
1-6 Nays 0, 1 present not voting; April 3, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 233 By: Brimer

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the authority of certain law enforcement agencies to  
1-11 establish a checkpoint to determine whether persons are boating  
1-12 while intoxicated.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Title 1, Code of Criminal Procedure, is amended  
1-15 by adding Chapter 65 to read as follows:

1-16 CHAPTER 65. BOATING SOBRIETY CHECKPOINTS

1-17 Art. 65.01. DEFINITION. In this chapter, "law enforcement  
1-18 agency" means an entity of the state or a political subdivision of  
1-19 the state that employs a peace officer who patrols the public waters  
1-20 of this state.

1-21 Art. 65.02. APPLICABILITY. This chapter applies only to:

1-22 (1) a law enforcement agency of a municipality with a  
1-23 population of 75,000 or more that:

1-24 (A) is located in a county with a population of  
1-25 400,000 or more; and

1-26 (B) is adjacent to a lake:

1-27 (i) that is at least 20,000 acres;

1-28 (ii) that has at least 150 miles of  
1-29 shoreline; and

1-30 (iii) in which the municipality shares  
1-31 jurisdiction with at least three other municipalities located in  
1-32 the same county as the municipality, each of which has a population  
1-33 of 25,000 or less;

1-34 (2) a law enforcement agency of a municipality  
1-35 described by Subdivision (1)(B)(iii);

1-36 (3) a county law enforcement agency that is operating  
1-37 within the jurisdiction of a municipality described by Subdivision  
1-38 (1) or (2); and

1-39 (4) a state law enforcement agency that is operating  
1-40 within the jurisdiction of a municipality described by Subdivision  
1-41 (1) or (2).

1-42 Art. 65.03. AUTHORIZATION FOR BOATING SOBRIETY  
1-43 CHECKPOINTS. A law enforcement agency may operate a temporary  
1-44 checkpoint as provided by this chapter to determine whether persons  
1-45 operating watercraft are intoxicated and in violation of Section  
1-46 49.06, Penal Code.

1-47 Art. 65.04. APPROVAL OF AND PROCEDURES FOR BOATING SOBRIETY  
1-48 CHECKPOINTS. (a) A peace officer of at least the rank of  
1-49 lieutenant or its equivalent in the law enforcement agency must  
1-50 approve the operation of a boating sobriety checkpoint by peace  
1-51 officers of the agency and the procedures to be used in the  
1-52 operation of the checkpoint before the checkpoint begins operation.

1-53 (b) The law enforcement agency must record in writing the  
1-54 procedures:

1-55 (1) used in selecting the site for the boating  
1-56 sobriety checkpoint; and

1-57 (2) to be used in the operation of the checkpoint.

1-58 (c) The procedures for the operation of a boating sobriety  
1-59 checkpoint must ensure that the selection of watercraft to be  
1-60 stopped is reasonably predictable and nonarbitrary.

1-61 (d) The law enforcement agency, in establishing the  
1-62 location, time, and design of a boating sobriety checkpoint, shall  
1-63 consider the safety of the public subject to the checkpoint and the

2-1 peace officers operating the checkpoint. The law enforcement  
2-2 agency shall make reasonable efforts to advise operators of  
2-3 oncoming watercraft of the checkpoint and the purpose of the  
2-4 checkpoint, to demarcate the checkpoint, and to illuminate the  
2-5 checkpoint as necessary.

2-6 (e) The peace officer who makes the initial communication  
2-7 with the operator of a watercraft at the boating sobriety  
2-8 checkpoint must be wearing a uniform of the law enforcement agency  
2-9 that is distinguishable from civilian dress.

2-10 (f) The law enforcement agency shall establish procedures  
2-11 governing the encounters between watercraft operators and the peace  
2-12 officers to ensure that:

2-13 (1) intrusion on the operator is minimized; and  
2-14 (2) an inquiry is reasonably related to determining  
2-15 whether the operator is intoxicated and in violation of Section  
2-16 49.06, Penal Code.

2-17 (g) A peace officer may not direct the operator of or a  
2-18 passenger in a watercraft to leave the watercraft unless the  
2-19 officer has reasonable suspicion or probable cause to believe that  
2-20 the person has committed or is committing an offense. The design of  
2-21 a boating sobriety checkpoint may require that each watercraft  
2-22 subject to the checkpoint be diverted to a specific location to  
2-23 ensure safety.

2-24 (h) A peace officer at the boating sobriety checkpoint may  
2-25 not require a watercraft operator to perform a field sobriety test  
2-26 unless the officer has reasonable suspicion or probable cause to  
2-27 believe that the operator is in violation of Section 49.06, Penal  
2-28 Code. A peace officer who requires or requests an operator to  
2-29 provide a specimen of breath, blood, or urine must comply with  
2-30 Chapter 724, Transportation Code.

2-31 (i) Unless a peace officer has reasonable suspicion or  
2-32 probable cause to detain a watercraft operator or passenger for a  
2-33 criminal offense, the time during which an officer makes an inquiry  
2-34 of an operator or passenger should not exceed three minutes, and the  
2-35 total time during which the operator must wait to pass through the  
2-36 boating sobriety checkpoint should not exceed 10 minutes. The law  
2-37 enforcement agency shall make reasonable efforts to reduce these  
2-38 periods to not more than one and five minutes, respectively.

2-39 (j) The law enforcement agency shall publicize the  
2-40 operation of a boating sobriety checkpoint but is not required to  
2-41 disclose the precise date, time, location, or purpose of the  
2-42 checkpoint.

2-43 (k) A law enforcement agency may not operate a boating  
2-44 sobriety checkpoint at one location for more than four hours and may  
2-45 not operate a checkpoint at the same location more than twice in a  
2-46 seven-day period. This subsection does not apply in an emergency.

2-47 (l) A law enforcement agency shall keep a record of each  
2-48 operation of a boating sobriety checkpoint that contains:

2-49 (1) the date, time, location, and duration of the  
2-50 checkpoint;

2-51 (2) the number of watercraft stopped at the checkpoint  
2-52 and the number and nature of any arrests made or citations issued at  
2-53 the checkpoint; and

2-54 (3) the identities of the peace officers operating the  
2-55 checkpoint.

2-56 SECTION 2. This Act takes effect immediately if it receives  
2-57 a vote of two-thirds of all the members elected to each house, as  
2-58 provided by Section 39, Article III, Texas Constitution. If this  
2-59 Act does not receive the vote necessary for immediate effect, this  
2-60 Act takes effect September 1, 2007.

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